(13) Where permitted by the security instrument, attorney's fees and expenses actually incurred in the defense of any suit or legal proceeding wherein the mortgagee shall be made a party thereto by reason of the mortgage; (No attorney's fee may be charged for the services of the mortgagee's or servicer's staff attorney.)

(14) Property preservation expenses incurred pursuant to § 203.377.

(b) *reasonable and customary* fees must be predicated upon the actual cost of the work performed including out-of-pocket expenses. Directors of HUD Area and Insuring Offices are authorized to establish maximum fees and charges which are reasonable and customary in their areas. Except as provided in this part, no fee or charge shall be based on a percentage of either the face amount of the mortgage or the unpaid principal balance due on the mortgage.

[41 FR 49736, Nov. 10, 1976, as amended at 52 FR 1330, Jan. 13, 1987; 61 FR 35019, July 3, 1996; 62 FR 60130, Nov. 6, 1997]

§ 203.554 Enforcement of late charges.

(a) A mortgagee shall not commence foreclosure when the only default on the part of the mortgagor is the failure to pay a late charge or charges (§ 203.25), except as provided in § 203.556.

(b) A late charge attributable to a particular installment payment due under the mortgage shall not be deducted from that installment. However, if the mortgagee thereafter notifies the mortgagor of his obligation to pay a late charge, such a charge may be deducted from any subsequent payment or payments submitted by the mortgagor or on his behalf if this is not inconsistent with the terms of the mortgage. Partial payments shall be treated as provided in § 203.556.

(c) A payment may be returned because of failure to include a late charge only if the mortgagee notifies the mortgagor before imposition of the charge of the amount of the monthly payment, the date when the late charge will be imposed and either the amount of the late charge or the total amount due when the late charge is included.

(d) During the 60-day period beginning on the effective date of transfer of the servicing of a mortgage, a late charge shall not be imposed on the mortgagor with respect to any payment on the loan. No payment shall be treated as late for any other purpose if the payment is received by the transferor servicer, rather than the transferee servicer that should receive the payment, before the due date (including any applicable grace period allowed under the mortgage documents) applicable to such payment.

[42 FR 15680, Mar. 23, 1977, as amended at 59 FR 65448, Dec. 19, 1994]

§ 203.556 Return of partial payments.

(a) For the purpose of this section, a partial payment is a payment of any amount less than the full amount due under the terms of the mortgage at the time the payment is tendered, including late charges.

(b) Except as provided in this section, the mortgagee shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a trust account pending disposition. When partial payments held for disposition aggregate a full monthly installment they shall be applied to the mortgagor's account, thus advancing the date of the oldest unpaid installment but not the date on which the account first became delinquent.

(c) If the mortgage is not in default, a partial payment may be returned to the mortgagor with a letter of explanation.

(d) If the mortgage is in default, a partial payment may be returned to the mortgagor with a letter of explanation in any of the following circumstances:

(1) When payment aggregates less than 50 percent of the amount then due;

(2) The payment is less than the amount agreed to in a forbearance plan, whether or not reduced to writing;

(3) The property is occupied by a tenant who is paying rent and the rentals are not being applied to the mortgage payments;

(4) Foreclosure has been commenced. (Foreclosure is commenced when the first action required for foreclosure under applicable law is taken.)